

BEING MOBILIZED AND GETTING WORRIED ABOUT YOUR JOB?

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a federal law that gives employees who leave a civilian job to perform military service the right to return to the civilian job held before entering military service.

Who gets USERRA protection?

USERRA protection applies if you meet all five of these tests:

1. **Job.** Did you have a civilian job before you went on active duty? USERRA applies to all private employers, state governments, and the federal government.
2. **Notice.** YOU (OR A RESPONSIBLE OFFICER FROM YOUR MILITARY SERVICE) MUST GIVE ADVANCE NOTICE TO YOUR EMPLOYER *BEFORE* LEAVING FOR ACTIVE DUTY IF POSSIBLE. Notice can be oral or in writing, but written notice is best, and you should keep a copy of your notice.
3. **Duration.** As a general rule, you can be on active duty away from your civilian job for up to five years.
4. **Character of service.** USERRA protections apply if you are discharged with an Honorable or General discharge. You are not protected if your active duty ends with an Other Than Honorable Discharge, a Bad Conduct Discharge, or a Dishonorable Discharge, or you are dropped from the rolls.
5. **Prompt return to work.** If your military service lasted 30 days or less, you must report back to the first shift which begins after safe travel time from your military duty site plus eight hours to rest. If you are on active duty for 31 to 180 days, you must apply in writing for reemployment within 14 days after completing military service. If you were on active duty 181 days or more, you must apply in writing for reemployment within 90 days. Tell your employer that you worked there before, and that you left for military service. Any of these deadlines can be extended for up to two years if you are hospitalized or recovering from a service-connected injury or illness.

Other USERRA Benefits

Health insurance during service. If you go on active duty for a period of 30 days or less and ask for it, your employer must continue to carry you and your family on the company health plan at the normal cost to you. You can continue coverage for up to 18 months, but your employer can pass on the full cost (*including the company's share*) to you.

Prompt reinstatement. You get your civilian job back immediately if you were gone 30 days or less. After longer service, you must get your job back within a few days.

Status & Seniority. For purposes of status, seniority, and most pension rights (including pay rate) you are treated as if you never left for military service. If your peers got promotions or raises while you were gone, you do too.

Training and other accommodations. Your employer must train you on new equipment or techniques, refresh your skills, and accommodate any service-connected disability.

Special protection against discharge other than for cause. If you are fired within a protected period, your employer must prove the firing wasn't because of your military service. Your protected period varies with the length of your military service.

Immediate reinstatement of health benefits. You and your family may choose to go back on the company health plan immediately when you return to your civilian job. There can be no waiting period and no exclusion of pre-existing conditions, other than for VA-determined service-connected conditions.

Anti-discrimination. USERRA prohibits discrimination based on military service or military service obligation.

Other benefits. USERRA provides certain rights. It does not eliminate any *other* rights you may have, in addition to your USERRA rights, from state law, contract, or collective bargaining agreement.

Enforcement

If you, the Reserve Component member, have a reemployment problem or concern related to military service in the National Guard or Reserves, start by talking with your employer, then your command. If that doesn't resolve the matter, contact the National Committee for Employer Support of the Guard and Reserve (ESGR), Ombudsman (800) 336-4590 or (703) 696-1411. Email: webmaster@esgr.org. ESGR Ombudsmen are qualified to help, sympathetic to the needs of both the employers and employees, and committed to remaining impartial in their counsel. The Ombudsmen Services Program was established in 1974 to provide information, counseling, informal mediation of issues relating to compliance with the USERRA, and referral service to resolve employer conflicts.

You may also contact the U.S. Department of Labor Veterans' Employment and Training Service (VETS). The Department of Labor (DOL) is responsible for resolving and/or investigating reemployment issues. The DOL developed the elaws Advisors to help *employees and employers* understand their rights and responsibilities under numerous Federal employment

laws, including USERRA. Each Advisor includes links to more detailed information that may be useful to the user, such as links to regulatory text, publications, and organizations. The USERRA Advisor URL is: <http://www.dol.gov/elaws/userra0.htm> .

Of note, USERRA also gives you the right to sue your employer. If your lawsuit is successful, and was handled by a private attorney, you may be able to recover court costs and attorney fees from your employer. Sometimes attorneys with the Department of Justice will handle this litigation. You should discuss this with a legal assistance attorney.

Some other useful websites are <http://www.esgr.org> & <http://www.dol.gov/dol/vets>.

If you still have questions, contact your legal assistance attorney at the Fort Monmouth Legal Services Branch at (732) 532-4371. Remember, your military legal assistance attorney may not act as your personal attorney in reemployment disputes, but may refer you to a private attorney or help you request government counsel.

The Point of Contact for this subject in the CECOM Legal Office is Ms. Pamela McArthur, (732) 532-4760, DSN 992-4760.

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